

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SIYI ZHOU,

Plaintiff,

v.

ALBERTO GONZALES,
U.S. ATTORNEY GENERAL,

Defendant.

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No. 06-cv-100

MEMORANDUM

Presently pending are Plaintiff's "Motion of Siyi Zhou For Stay of this Court's Order of June 12, 2006 Pending Review of Petition for a Writ of Mandamus Filed with the United States Court of Appeals for the Third Circuit on June 5, 2006" (Dkt. #8) and Defendant's Response thereto, and Plaintiff's "Motion to Vacate the U.S. District Court E.D. Pa's Memorandum and Order of 6/12/06" (Dkt. #14) and Defendant's Response thereto.

In its Order entered June 13, 2006, this court found that "Plaintiff has failed to allege any jurisdictional ground upon which this court could order Defendant to take any action," and consequently dismissed Plaintiff's Complaint and Motion to Compel with prejudice. Neither Plaintiff's Motion for a Stay nor his Motion to Vacate provide any new basis upon which the Court could find that Plaintiff has stated a cause of action for which the United States has waived sovereign immunity. See United States v. Mitchell, 445 U.S. 535, 538 (1980) (stating that the doctrine of sovereign immunity provides immunity to the United States from suit unless there is express consent); United States v. Testan, 424 U.S. 392, 399 (1976) (stating that Congress must consent to a cause of action against the United States for a court to entertain suits against the federal government). Since there continues to be no jurisdictional basis for Plaintiff's claims, there is no basis for granting a stay.

Additionally, the Motion to Vacate is subject to the filing deadlines set forth in the Federal Rules of Civil Procedure for a Motion to Alter or Amend Judgment pursuant to Rule 59. Fed. R. Civ. P. 59 (e). Rule 59 (e) requires any motion to alter or amend a judgment be filed no

later than 10 days after entry of the judgment. Id. Here, the Order of the Court dismissing Plaintiff's Complaint and Motion to Compel was entered on June 13, 2006. Plaintiff filed the Motion to Vacate the Order on July 10, 2006. As such, the Motion to Vacate must also be dismissed as untimely. An appropriate order follows.

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No. 06-cv-100

ORDER

AND NOW, this 13th day of September 2006, **IT IS HEREBY ORDERED** that Plaintiff's "Motion of Siyi Zhou For Stay of this Court's Order of June 12, 2006 Pending Review of Petition for a Writ of Mandamus Filed with the United States Court of Appeals for the Third Circuit on June 5, 2006" (Dkt. #8), and Plaintiff's "Motion to Vacate the U.S. District Court E.D. Pa's Memorandum and Order of 6/12/06" (Dkt. #14) are **DENIED**

BY THE COURT:

S/Clifford Scott Green
CLIFFORD SCOTT GREEN